...INS HOPKINS UNIVERSITY STUDIES
IN
...ICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

...Politics and Politics present History.—*Freeman*

XI

THE

GENESIS

OF A

...ENGLAND STATE

(CONNECTICUT)

...and Political Science Association, April 13, 1883

...NDER JOHNSTON, A. M.

BALTIMORE
... with Johns Hopkins University
SEPTEMBER, 1883.

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H. B. ADAMS, Editor.

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XI

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(CONNECTICUT)

"There was only one thing dearer to him [the New Englander] than his township —his hearth. The 'town' was as ancient as the neighborhood, and older than the county; his great-grandson knows that it is much older than the State, or the Union of the States.—*E. G. Scott.*

"In this part of the Union [New England] the impulsion of political activity was given in the townships; and it may almost be said that each of them originally formed an independent nation. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the State."—*De Tocqueville, (Reeve's Trans.).*

"Each New England State may be described as a confederacy of minor republics called towns."—*Palfrey.*

"The inhabited part of Massachusetts was recognized as divided into little territories, each of which, for its internal purposes, constituted a separate integral government, free from supervision."—*Bancroft.*

O matre pulchra filia pulchrior!

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History is past Politics and Politics present History.—*Freeman*

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OF A
NEW ENGLAND STATE

(CONNECTICUT)

Read before the Historical and Political Science Association, April 13, 1883

BY ALEXANDER JOHNSTON, A. M.

BALTIMORE
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THE

GENESIS OF A NEW ENGLAND STATE

(CONNECTICUT)

In the new interest which has sprung up of late years in the institutional history of the United States, it is a little strange that the territorial forms and features, the bodies, of the States themselves are usually left so far out of account. It may be that this neglect has come from their comparative constancy of outline. It is easy to trace most of the internal workings of the State to the town system or its equivalents, and to accept them as a purely natural outgrowth. But it is just as easy to see that the external outline of New York, Illinois, or Texas has, from a very early period, been much the same as at present, and to accept it as artificial, as imposed on the State spirit by some superior power.

And it must be confessed that this distinction holds good as a general rule. Each of our States has had, throughout its history, a remarkable uniformity of feature. There is comparatively little of that breaking up and reuniting, that shooting out of a crystal here, or disappearance of a limb there, which gives the idea of natural growth in a French kingdom, while it makes it difficult to say just where the growth took permanent shape. Our States, we might almost say, came into the world full grown, like Minerva. Even the Massachusetts towns, the accepted exemplars of their class, found their Commonwealth boundaries waiting for them when they came into existence, and conformed to them. In the original States there is usually a certain sequence of events:

a grant of territory by the King to a great mercantile company or court favorite; a subsidiary, or an entirely new, grant to actual colonizers; and the location of the colony with fairly, if clumsily, defined boundaries, which have continued substantially the same down to our own day. In the States subsequently formed there is a quite parallel sequence of events: the acquisition of jurisdiction by the nation; the establishment of territorial boundaries by Congress; and the erection of a State within the external limitations already imposed. Of course, the general idea will not bear minute examination: all the States have had their variations of outline, some of them pregnant with significance; and the historical geography of the United States is a field where some worker will yet find a rich and virgin soil. Nevertheless it remains true that the individuality of the future State is sufficiently constant from its first connection with human interest, history and government to give good reason for considering it in the beginning as a human creation rather than a natural growth.

We look, then, as a general rule, to the will of the governing power of a colony for the body, the territorial form, of a township, while we look to the Germanic heredity of the people for its spirit; we look to the town spirit for the spirit of the future State, and to the will of a King or of a Congress for its body, its territorial form and boundaries. It is the purpose of this article to direct attention to one of the few exceptions to this general rule, the present State of Connecticut,* a State which was born, not made, which grew by natural accretion of townships, which formed its own government, made its own laws, engaged in its own alliances, fought

* Rhode Island and Vermont are the other exceptions, and as well deserve examination. We can hardly include Plymouth among the exceptions, for that colony only claimed individuality by charter purchase; nor Texas, whose admission to the Union was a flagrant violation of every precedent of State origin.

its own wars, and built up its own body, without the will of King, Kaiser, or Congress, and which, even at the last, only made use of the royal authority to complete the symmetry of the boundaries it had fairly won for itself.*

Territorial Claims.

The accepted story of the transmission of the title to the jurisdiction of Connecticut is very simple. The soil was a part of James I.'s grant to the Council of Plymouth; a part of the smaller grant to the Earl of Warwick in 1630 by the Council of Plymouth; a part of the still smaller grant to Viscount Say and Sele, Lord Brooke, and others in 1631 by Warwick; and the territory, as it now stands, was confirmed to the colony of Connecticut by Charles II.'s charter of 1662, with the consent of the survivors of the last named grantees. Minor difficulties, such as Fenwick's troublesome claim under the Say grant, were bought off by the colony; the Indian possessory title was extinguished by purchase and conquest, and the colony's chain of title to its own territory seemed to be without a weak link. In that case, there would have been nothing out of the ordinary in the Connecticut colony, and

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*Authorities in General: Trumbull's *Colonial Records of Connecticut;* Hoadley's *Colonial Records of New Haven;* Bowen's *Boundary Disputes of Connecticut;* Trumbull's *History of Connecticut;* Hollister's *History of Connecticut;* Dwight's *History of Connecticut;* Peters' *General History of Connecticut* (McCormick's reprint of 1877); Atwater's *Colonial History of New Haven;* Bacon's *Ecclesiastical History of Connecticut;* Fowler's *Local Law in Massachusetts and Connecticut;* Savage's *Winthrop's New England;* Brodhead's *History of New York;* O'Callaghan's *History of New Netherland;* Thompson's *History of Long Island;* Wood's *First Towns of Long Island;* Holland's *History of Western Massachusetts;* Hartley's *Hartford in the Olden Time;* Stiles's *History of Ancient Windsor;* Hall's *History of Norwalk;* Huntington's *History of Stamford;* Caulkins's *History of New London;* Mead's *History of Greenwich;* Howell's *Early History of Southampton, L. I.;* Bond's *History of Watertown, Mass.* References are made to the author's name, except in the case of records.

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the formation of its territorial body would have followed the general rule.

But there was a weak link, or rather a non-existent link, the grant to Warwick: he who looks for it will look in vain. Trumbull and Dwight* assume that the Say and Sele grant was really from the Council of Plymouth, of which Warwick was the President; but the Say and Sele grant† is, by its terms, from Warwick personally, and the Council of Plymouth is not even named in it. Hollister‡ takes a much more tenable ground: he admits that no trace can be found of a grant to Warwick, but assumes that such a grant must have been made, since Warwick would not otherwise have ventured to make the Say and Sele grant. Peters§ scouts the notion of a grant to Warwick, and taunts the colonial government with its inability to show any original title. Bancroft‖ and other general authorities state the grant to Warwick without noting any doubt as to its validity, and it is generally accepted without question as the basis of Connecticut's territorial claims, subsequently confirmed by the charter.

On the other hand, not only is it evident that the original settlement of Connecticut was legally a sheer intrusion, in absolute disregard of the paper title on which it afterwards professed to rely, but the Plymouth Council itself did not recognize the Warwick grant, or the claims of the Say and Sele associates under it. On the contrary, when it divided

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*1 *Trumbull*, 27; *Dwight*, cap. 1.

†It is given in 1 *Trumbull*, 495.

‡1 *Hollister*, 20.

§ *Peters*, 27. "The Governor and Company of Connecticut gave a formal answer, setting up a title under the Earl of Warwick, who, they said, disposed of the land to Lord Say and Sele and Lord Brooke, and the Lords Say and Brooke sold the same to Fenwick, Peters, and others. The Earl of Arran answered that, when they produced a grant from the Plymouth Company of those lands to the Earl of Warwick, it should have an answer. But the colony was silent."

‖1 Bancroft's *United States*, 395.

the remaining property in the soil among its members in 1635, before surrendering the jurisdiction to the King, it granted the territory between the Narragansett and Connecticut rivers to the royalist Marquis of Hamilton, and recorded the grant. This was the only Connecticut grant, up to the charter, which came from a source having an ostensible power to grant, and it became obsolete by non-user, since the royalist patentee was unable to make any attempt to colonize under it until colonization was completed without his assistance.* On the other side of Long Island Sound lay the fine territory of Long Island. This was covered by a royal grant to the Earl of Stirling in 1635; but the grantee made no attempt to assert any rights of jurisdiction, and his grantees had at first as open opportunity as the settlers on the mainland to erect independent town republics.†

The nearest approach to the truth seems to be that an informal, and consequently invalid, grant of some kind was made to Warwick, and that the original colonists, in their subsequent search for a paper title, took this as the best one available to them, though they had never respected it in practice. They were in no position to feel or assert any pride in that which makes their colonization noteworthy, the absence of an original patent. They would have asserted the Hamilton patent with equal warmth, if it had offered superior advantages; they chose the Warwick title because Say in 1662, while he was a republican, was yet a man of influence with the King, because he was a friend to New Englanders and disposed to assist any New England colony, and because he, the only surviving patentee, was too rich to care for quit rents and too old to be a dangerous ally. The truth is, that

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* The Hamilton heirs, in 1683 and subsequent years, sued for a recovery of their alleged rights in the soil, but their suit was denied for the reason that it would be unjust to disturb long settled titles, and to give the heirs the benefit of the colonists' improvements. See 1 *Trumbull*, 360.

† *Thompson*, 117; 1 *O'Callaghan*, 210, 215; *Wood*, 6, 20.

the colonization and organization of Connecticut took place without the remotest connection with any paper title whatever, and that the Warwick title was purely an after thought to bolster up, by the forms of English law, the really better title of the colonists, acquired by their own purchases, conquests, and colonization. For the purposes of this article the Warwick and Say titles may be dismissed as practically both non-existent.

In 1634, then, the territory now occupied by Connecticut was a veritable No-Man's-Land. It had been granted, indeed, to the Plymouth Council, but the grant stood much on a par with a presentation of a bear skin whose natural owner was still at large in the forest. On the north, the Massachusetts boundary line had been defined by charter, though its exact location, in its whole length, was still in the air; on the east, the Plymouth purchase boundary was in the same condition; on the west, the asserted Dutch boundary of New Netherlands was in the same condition. The debatable ground between these unsettled boundaries offered one of the few opportunities which the town system has had to show how it can build up the body, as well as provide the spirit, for a State. A brief sketch of the manner in which the work was done will show that the towns, the natural outgrowth of the colonists' natures, formed their own colonial governments, pushed back the asserted boundaries of their neighbors, and obtained for themselves a local habitation and a name among commonwealths long before the King added the sanction of his royal assent to a work which had already been accomplished without it.

Colonization.

Movement toward the vacant territory fairly began in 1633. In that year the Dutch established a trading house where Hartford now stands; William Holmes, a Plymouth skipper, sailed up the Connecticut river, passed the Dutch station, and established a trading house where Windsor now stands; and

a few Massachusetts traders and explorers had made their way through the wilderness to the same point. In the following year the first real settlements took place. In 1630 and 1632 the towns and congregations of Dorchester, Watertown and Newtown, in Massachusetts, had been founded, each by a distinct body of immigrants from England.* For various reasons they became dissatisfied with their location, and desired a removal further west. After a year's persistent application they wrung from the General Court a reluctant consent, conditioned on their remaining within the jurisdiction of Massachusetts.† In 1634, before the consent was given, a few persons from Watertown settled at Wethersfield. In 1635 the main Watertown body followed to Wethersfield, and the Dorchester body to Windsor; and in 1636 the main Newtown body removed to Hartford. At the end of the year 1636, these three townships, the nucleus of the Connecticut colony, contained about 160 families and 800 persons. In the following year they contained a sufficient number of fighting men to declare war against the Pequots, and almost annihilated that tribe.‡

In 1635, the Say and Sele associates built a fort at the mouth of the Connecticut river. In 1639, Colonel George Fenwick, the only one of the associates who showed any disposition to urge the claim, brought colonists to Saybrook, or Seabrook, as the fort was often called, and it kept up an independent existence for some years. Fenwick was treated by the Connecticut colonists with the deference due to a possibly formidable rival. In 1644 various reasons recalled him to England, and he sold Saybrook to the Connecticut colony. The equivalent was to be certain tolls upon vessels passing the fort, and they netted Fenwick about £1,600. In return he transferred the fort and promised, "if it came into his

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* 1 Mather's *Magnalia*, 75.

† 1 Savage's *Winthrop*, 167.

‡ See the Connecticut authorities.

power," to transfer all the land from Saybrook to the Narragansett river. This agreement was never executed, but it quieted the only one of the Say and Sele associates who had shown any disposition to interfere with the pushing and ambitious Connecticut colony. Saybrook now became a Connecticut town.*

In 1637 the wealthiest body of immigrants that had yet come from England arrived at Boston.† They resisted all inducements to settle in Massachusetts, and in 1638 founded a colony of their own at what is now New Haven. Their title rested entirely on purchase from the Indians, as did all their subsequent extensions. When their stronger neighbor, the Connecticut colony, by its Fenwick purchase, acquired a *pseudo* title under the Say and Sele grant, the New Haven colony at first showed signs of a disposition to assert the Stirling grant as perhaps giving it some kind of a paper title beyond its mere purchases on Long Island;‡ but it soon settled back, for its right to existence, upon its Indian purchases and its recognition as a member of the New England Union in 1643.§

There were thus, in 1638, three independent colonies within the present limits of Connecticut. One of them, the Saybrook colony, rested on a paper title, which rested on nothing and was never perfected. The other two, the survivors after 1644, had not even a baseless paper title to rest upon. Both were as perfect examples of "squatter sovereignty" as Douglas could have asked for. Without a shadow of reliance upon authority, they formed their own governments, *proprio vigore*, made war, peace and alliances, levied taxes, and collected customs. In 1643 they united with

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* *Dwight*, cap. 12. The agreement is in 1 *Conn. Rec.*, 266.

† *Atwater*, 80.

‡ 2 *New Haven Rec.*, 300. "Our title to those lands from the Lord Starling."

§ See New Haven authorities.

Plymouth and Massachusetts Bay in the New England Union. In 1650 they joined in the treaty at Hartford with Governor Stuyvesant, which put the boundary between New York and Connecticut * very much as at present, except that it was a straight line throughout, and continued across Long Island from Oyster Bay to the Ocean. Before the charter was granted, Massachusetts † had agreed to a boundary line not very far from that which was ultimately settled; and as Massachusetts claimed the territory on the east, the modern State of Rhode Island, the limits of the commonwealths were fairly settled. Let us see how their towns developed them, and how they treated their towns.

The Connecticut Colony.

It must be noted that these Newtown, Watertown, and Dorchester migrations had not been altogether a simple transfer of individual settlers from one colony to another. In each of these migrations a part of the people was left behind, so that the Massachusetts towns did not cease to exist. And yet each of them brought its Massachusetts magistrates, its ministers (except Watertown), and all the political and ecclesiastical machinery of the town; ‡ and at least one of them (Dorchester) had hardly changed its structure since its members first organized in 1630 at Dorchester in England. The first settlement of Connecticut was thus the migration of three distinct and individual town organizations out of the jurisdiction of Massachusetts and into absolute freedom. It was the Massachusetts town system set loose in the wilderness.

At first the three towns retained even their Massachusetts names; and it was not until the eighth court meeting, Feb-

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* 1 *Brodhead*, 519.

† *Bowen*, 17, (map).

‡ 1 *Bond*, 980; *Hartley*, 49; *Stiles*, 25 (note).

ruary 21, 1636 (7), * that it was decided that "the plantacon nowe called Newtowne shalbe called & named by the name of Harteforde Towne, likewise the plantacon now called Watertowne shalbe called & named Wythersfeild," and "the plantacon called Dorchester shalbe called Windsor." On the same day the boundaries between the three towns were "agreed" upon, and thus the germ of the future State was the agreement and union of the three towns. Accordingly, the subsequent court meeting at Hartford, May 1, 1637,† for the first time took the name of the "Genrall Corte," and was composed, in addition to the town magistrates who had previously held it, of "comittees" of three from each town. So simply and naturally did the migrated town system evolve, in this binal assembly, the seminal principle of the Senate and House of Representatives of the future State of Connecticut. The Assembly further showed its consciousness of separate existence by declaring "an offensive warr ag^{t} the Pequoitt," assigning the proportions of its miniature army and supplies to each town, and appointing a commander. In June it even ordered a settlement to "sett downe in the Pequoitt Countrey ‡ & River in place convenient to mayn-teine o^{r} right y^{t} God by Conquest hath given to us." So complete are the features of State-hood, that we may fairly assign May 1, 1637, as the proper birthday of Connecticut. No King, no Congress presided over the birth: its seed was in the towns.

January 14, 1638 (9), the little Commonwealth formed the first American Constitution, § at Hartford. So far as its pro-

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* 1 *Conn. Rec.*, 7.

† 1 *Conn. Rec.*, 9.

‡ The Pequot Country was, in general terms, the south-eastern part of the State, east of the Connecticut river. Massachusetts claimed a share in the rights of conquest, but Connecticut never relaxed her hold upon it, and the charter gave her a formal approval of her claim.—*Bowen*, 26 (map).

§ 1 *Conn. Rec.*, 20.

visions are concerned, the King, the Parliament, the Plymouth Council, the Warwick grant, the Say and Sele grant, might as well have been non-existent: not one of them is mentioned. It is made, according to the preamble, on the authority of the *people* dwelling on "the River of Connectecotte and the Lands thereunto adioyneing;" its objects are to establish "an orderly and decent Gouerment," which should "order and dispose of the affayres of the people," and to maintain "the liberty and purity of the gospell" and "the disciplyne of the churches;" and for these purposes its authors "doe therefore assotiate and conjoyne our selues to be as one Publike State or Comonwealth." The only sovereignty recognized in the constitution or the oaths of office prescribed by it, is that of the people. It cannot, therefore, be said that the government of Connecticut was *formed* by the three towns, though it undeniably grew out of them and was conditioned on every side by their precedent existence. Its establishment has some parallels to that of the Federal Constitution one hundred and fifty years afterward. In both cases the constituent units, towns and States, never independent in fact before or after, were nominally independent before but not after. In both cases, while the units remained the same as before, the constitution was not framed by General Court or by Congress, but by an unprecedented body, a popular convention in the one case, a Federal Convention in the other. In both cases the new political creation succeeded to a part of the powers which the constituent units had before exercised. Here the parallel ceases: there was no occasion for any ratification by the towns, since their inhabitants had united in framing the constitution itself.

There were to be two "General Assemblies or Courts" yearly, in April and September: the former for the election of a Governor and other magistrates for one year; the latter "for makeing of lawes." A General Court was to consist of a Governor, Magistrates, and Deputies. Each town was to

nominate two persons as Magistrates;* and out of the whole number nominated the General Court was to choose by ballot not less than six for the next year, but might "ad so many more as they judge requisitt." The three towns were each to send four Deputies "to agitate the affayres of the Comonwealth;" new towns were to send Deputies according to their population. If the Governor and Magistrates at any time refused to summon a General Court upon petition of the freemen, the towns, through their constables, were to issue the summons, and in such case the Governor and Magistrates were to be excluded from the General Court. The election of local officers and the management of local affairs were left entirely to the towns, with an indefinite power of supervision in the General Court. "In w^{ch} said Generall Courts shall consist the supreme power of the Comonwealth, and they only shall haue power to make lawes or repeal thē, to graunt leuyes, to admitt of Freemen,† dispose of lands vndisposed of to seuerall Townes or p^{r}sons, and also shall haue power to call ether Courte or Magestrate or any other p^{r}son whatsoeuer into question for any misdemeanour, and may for just causes displace or deale otherwise according to the nature of the offence, and also may deale in any other matter that concerns the good of this comonwelth, excepte election of Magestrats, w^{ch} shall be done by the whole boddy of Freemen." This constitution was not only the earliest but the longest in continuance of American documents of the kind, unless we except the Rhode Island charter.‡ It was not essentially altered by the charter of 1662, which was practically a royal confirmation of it; and it was not until 1818 that the charter, that is, the con-

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* These officers, the germ of the future Senate, exercised judicial powers in their towns; and, as the General Court grew stronger, it also appointed commissioners "with magestraticall powers" for the towns.

† In 1643 the General Court left the admission of freemen to a major vote of each town, retaining only a formal right of confirmation.

‡ Connecticut, 1639–1818; Rhode Island, 1663–1842.

stitution of 1639, was superseded by the present constitution. Connecticut was as absolutely a State in 1639 as in 1776.

In both the Connecticut and the New Haven colonies the General Courts not only made laws and pardoned offences against them, but exercised the judicial power on appeal from the Particular Courts, the magistrates of the towns. The records of both are cumbered with tedious civil and criminal suits, in which Connecticut provided for, and New Haven denied, trial by jury. But the essential difference between the two was, that Connecticut left to the towns a control over their civil and religious affairs which the more somber tone of New Haven denied. The early Connecticut town and its church were identical;* the officers and affairs of both were settled to the people's liking at one meeting; and the General Court interfered only to apportion taxes and decide differences. From the first appearance of a New Haven town, the General Court was always meddling. Connecticut gave the town system full and free play: New Haven aimed to be a centralized theocracy, responsible for the moral well being of its dependent towns. The consequence was that Connecticut rapidly outstripped her rival in the race for the formation of new towns and the appropriation of the No-man's-land around them. Her early Indian wars gave her extensive rights of conquest, which her restless citizens were not slow to perfect by settlement. Even the unchecked religious dissensions in her churches hastened the process of town formation by scattering new settlements governed by Connecticut notions.† Thus, long before the grant of a charter, Connecticut had

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*In 1726, members of other sects than the Congregational having become numerous, the General Court allowed the formation of other churches. When this was done, the Congregational church took the legal name of "The Prime Ancient Society," and the town meetings were separated from it.

†A Wethersfield offshoot left the Connecticut colony, colonized Stamford, and very naturally became the most unmanageable of the New Haven towns.

hemmed her rival in by towns of her own, confined her to the territory around the original settlement, and left her no room for expansion.

Connecticut histories state that the towns were "incorporated" in 1639 by the General Court. The only incorporation was a series of general acts, passed October 10, 1639, the first after the adoption of the constitution; but these were only a formal legislative confirmation of recognized town privileges. They enacted* that "the Townes of Hartford, Windsore, and Wethersfield, or any other of the Townes within this jurisdiction," should have power to dispose of vacant lands, choose their own officers and courts, and control their local affairs; and they confirmed to the towns the probate jurisdiction and control over the records of real estate transfers which they still retain. They speak also of the towns' "lymitts bounded out by this court." In the case of neighboring towns, particularly where there were any differences of opinion, the court always exercised this power of settling town boundaries, beginning in the next year, 1640.† The boundaries of the new towns of Farmington and New London were laid out by the court in 1645 and 1649,‡ and this method of locating a new town was thereafter increasingly more frequent until 1662. After that year the General Court's authority in the matter became exclusive.

But, as a general rule, before the charter was received, the town boundaries were fixed by agreement of the inhabitants or by Indian purchase, and the tacit recognition of the General Court and its agents. The "incorporation" of a new town usually consisted in such fatherly advice as was given in 1650 to the persons intending to settle Norwalk: they are directed to make all preparations for self-defence, to divide

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* 1 *Conn. Rec.*, 36.

† 1 *Conn. Rec.*, 47.

‡ 1 *Conn. Rec.*, 133, 185. But in New London local government had already been begun by the people. *Caulkins*, 56.

up the land subject to the rectification of "aberrations" by the General Court, and to "attend a due payment of theire proportions in all publique charges."* The organization of a primitive Connecticut town was thus altogether popular, sometimes with, sometimes without, the General Court's express control.

As soon as the population of any defined purchase or grant became numerous enough to demand local government, a general meeting elected a constable and two or more townsmen, ordered the erection of a pound and (generally) of a minister's house, and took charge of allotments of land. As soon as the little town gained some consistence, the General Court's agents appeared with a demand for the town's "rate" or statement of persons and property, for purposes of taxation. For these purposes the constable was a Commonwealth's officer as well as a local officer, and through him and the magistrates or commissioners the town was attached to the Commonwealth.†

As soon as the rate showed a sufficient number of freemen, the town might send a Deputy to the General Court; but this troublesome privilege was at first unused. Until 1647 the twelve Deputies from the three original towns sufficed to make laws and lay taxes for all the towns.‡ Even when the number of Deputies begins to increase, the towns which they severally represent are not named. But the growth of the Connecticut town system may be seen by this steady increase in the number of Deputies after 1644, when Southampton, L. I., was admitted as a town. In May, 1647, the number of Deputies rose from 12 to 18; in May, 1649, to 20; in May, 1651, to 22; in May, 1654, to 24; in May, 1655, to 25; and in February, 1656(7), to 26. At first only the three

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*In 1651 the General Court formally voted that Mattabezeck (Middletown), and Norwalk should be towns, and choose constables.

†The process may be followed in detail in the local histories among the authorities.

‡Once, in 1645, thirteen were present.

original towns appear in the "rates." In 1645, Stratford, Fairfield, Southampton, L. I., Saybrook, and Farmington appear in the rates. In 1653, Norwalk, Middletown, and New London close the list of formal additions to the rate list of towns, until the advent of the charter. The other smaller towns, whose independent existence is constantly recognized in the General Court proceedings, were rated as parts of these principal towns.

The natural expansiveness of the free Connecticut town system was exemplified on Long Island.* After 1662 the colony's claim to that island rested on the charter's grant of the "island's adjoining" its coast: before that date, its claim was exactly on a par with its claim to the mainland, the voluntary action of the towns. In 1635 the King had granted Long Island to the Earl of Stirling. He seemed to care nothing for its jurisdiction; and, as purchases were made, the settlers formed towns and applied for admission to Connecticut.† Southampton was admitted in 1644, Easthampton in 1649, Setauket in 1658, Huntington in 1660, and Southold and the other English towns in 1662, after the grant of the charter. In 1664 the Duke of York, having bought the Stirling patent, extended the jurisdiction of New York over Long Island, and Connecticut was unable to resist him.‡ In 1673, when the Dutch recaptured New York, the English towns on Long Island again took shelter with Connecticut; but in the following year the Duke was again put into possession of his province, and Connecticut finally lost Long Island.§

During its period of independent existence, the Connecticut commonwealth, as has been said, gave the town system full

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*Springfield, Mass., was also for a time claimed as a Connecticut town, 1 *Holland*, 30–33. More than a century afterward, Connecticut's claim to a part of Pennsylvania was only asserted by means of the continued vitality of her town system, and its extension to Wyoming.

†Southold entered the New Haven colony, by purchase.

‡1 *Brodhead*, 726.

§ *Wood*, 24–28.

and free play. The instances of interference with local government are very few. In October, 1656, the towns were forbidden to entertain "Quakers, Ranters, Adamites, or such like notorious heretiques," under penalty of £5 per week. In February, 1656(7), the General Court limited the right of suffrage by declaring that the phrase "admitted inhabitants" in the constitution meant only "householders that are one & twenty yeares of age, or have bore office, or have £30 estate."* This was reaffirmed in 1658. In March, 1657(8), it was ordered that no persons should "imbody themselves into church estate" without consent of the General Court and approbation of their neighbor churches. With these exceptions, Connecticut towns did very much as they pleased in civil and religious affairs, provided they paid their rates promptly.

New Haven Colony.

June 4, 1639, the planters at Quinnipiack (New Haven) met and framed a civil government which was at least closely bound up with the ecclesiastical government.† They agreed that the Scriptures should be the law of the town; that only church members should be burgesses and choose magistrates from their own number; that twelve burgesses should now be chosen by general vote; and that these should choose seven of their number to be the seven pillars of the church and the first General Court. In the following year the name of the town was changed to New Haven. The management of public affairs by the General Court was of the most austere character. Sumptuary laws and acts to regulate prices and wages were immediately passed; and the authority of the church was upheld by punishing criminally such as did "expressly crosse y^e^ rule" by venturing to "eate, drinke, &

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*1 *Conn. Rec.*, 293.

†1 *New Haven Rec*, 11. *Bacon*, 24, argues to the contrary; but see *Atwater*, 94.

to shew respect unto excommunjcate persons." This system did not at first provoke any resistance in the original offshoots* from New Haven, the towns of Milford, Guilford, and Branford, whose people were wholly at one with those of New Haven. But it was a constant source of heartburning in the more distant acquisitions of Stamford and Southold;† it checked any extension of the New Haven jurisdiction outside of these six towns; and in the final struggle between Connecticut and New Haven, it proved to be the latter's vulnerable point.

New Haven extension was altogether by purchase; and, when the union of the towns was consummated, the General Court controlled the town organizations much more minutely than Connecticut attempted to do. Constables and magistrates for the new towns were appointed at first by the General Court, and the right of confirmation at least was always insisted upon, even when the towns began to assert their own right of choice. Some symptoms of weakening were shown as internal dissensions grew warmer. In 1656 two constables were appointed for Stamford, but one of them was not to serve if the freemen of that town were not willing, "though the court be of another minde."‡ But, as a general rule, all the towns were to follow implicitly the civil and ecclesiastical methods of the parent town; even the officers of their "trayned bandes" were to be church members, approved by the magistrates whom the General Court had appointed or confirmed.

In this manner five dependent or co-ordinate towns were formed.§ The neighboring towns of Milford and Guilford, bought in 1639, were independent at first, but were admitted to the General Court in 1643. Stamford, bought in 1640,

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* *Fowler*, 68.

† *Huntington*, 73; *Atwater*, 387.

‡ 2 *New Haven Rec.*, 173.

§ Unsuccessful efforts were also made to colonize in Delaware Bay.

was admitted in 1641. Southold, L. I., bought in 1640, was admitted in 1649. Greenwich was also bought in 1640, but the Dutch seduced the purchasing agents into making it a Dutch town.* In 1650, by the treaty of Hartford, it was restored to New Haven and became a part of Stamford. The last of the towns, Branford, granted to a new colony in 1640, was also independent at first: it was admitted in 1651. In 1656 and 1659 Huntington, L. I., applied to be admitted, but was refused because it insisted on the right of trying all its civil cases, and all its criminal cases not capital.† All the New Haven towns were thus restricted to the same mould. One trivial exception was made in the case of Milford, which had made voters of six persons, not church members, before its admission. This was allowed to stand, after much negotiation, on condition that it should never be repeated, and that the six interlopers should never hold office.

October 27, 1643, the General Court, which was now composed of the Governor and the Magistrates and Deputies of New Haven, Stamford, Milford, and Guilford, adopted a series of "foundamentall orders" as a constitution.‡ All persons were to have the rights of "inheritance and commerce," but only church members were to be burgesses, vote, or hold office. The towns were to choose their own courts, but these were only to try civil cases under £20, or inflict punishment of "stocking and whipping," or a fine of £50. All higher cases, and appeals in the lower cases, were reserved to the General Court. The free burgesses were to choose the Governor and other commonwealth officers, those at a distance voting by proxy. The Governor, the Magistrates of each town, and two Deputies from each town, were to meet at New Haven in General Court annually in April and October. The General Court was to maintain the purity

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* *Mead*, 28.

† 2 *New Haven Rec.*, 237, 299.

‡ 1 *New Haven Rec.*, 112; *Fowler*, 71.

of religion and "suppress the contrary," make and repeal laws, require their execution by the towns, impose an oath of fidelity upon the people, levy rates upon the towns, and try causes according to the Scriptures. In April, 1644, "the laws of God, as they were delivered by Moses," were adopted as the criminal code of the Commonwealth.*

The records of the General Court from 1644 until 1653 have disappeared, but it is evident that internal difficulties had taken shape during the period covered by the break. In 1653 the General Court remarked with asperity that it had "heard sundrie reports of an vnsatisfying offensive way of cariag in some at Southold, as those w^ch^ grow weary of that way of civill gouerment w^ch^ they haue for diuers yeares (and w^th^ much comfort and safty) liued vnder," and warned the offenders to abate the scandal.† Soon afterward the Governor called attention to a public appeal to the people "to stand for their libberties, that they may all haue their votes and shake of the yoake of gouermt they haue bine vnder in this jurisdiction." In the next year there were incipient rebellions in Southold and Stamford, and it was ordered that "a serious view be made" in each town, and the oath of fidelity be administered to all the inhabitants. Several of the Southold people were haled before the Court for seditiously declaring that this was "a tyrannicall gouerm^t^." Two years afterward the Court complained that men not church members had been allowed to vote in some of the towns, contrary to the "foundamentall orders," and directed that "these orders be exactly attended." The Southold constables were specially instructed to make a "reformation" in that town.

This persistent attempt to keep the towns in pupilage, and the political power in the hands of church members, contrasted very unfavorably with the policy of Connecticut,

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*1 *New Haven Rec.*, 130.
†2 *New Haven Rec.*, 17.

where, after 1643, the General Court admitted as voters all who were approved by a major vote of any town, with a general property qualification. The struggle was between a free town system and a system of shackled towns; and the latter was at a disadvantage. A strong Connecticut party had grown up before the charter was granted, not only in Stamford and Southold, but in Guilford and Milford. In 1661 several of the magistrates refused to take the oath of fidelity; and the spirit of disaffection had eaten so deep that, if we may accept the unchallenged assertion of the Connecticut General Court, the annihilation of the New Haven jurisdiction. and the absorption of its territory into Connecticut, were urged by the "cheife in gouerment" at New Haven in letters to Governor Winthrop.* This result, as accomplished by the charter in 1662, seems to have been only a hurrying of an inevitable catastrophe.

The Union.

The Restoration in England left the New Haven colony under a cloud in the favor of the new government: it had been tardy and ungracious in its proclamation of Charles II.; it had been especially remiss in searching for the regicide colonels, Goffe and Whalley;† and any application for a charter would have come from New Haven with a very ill grace. Connecticut was under no such disabilities; and it had in its Governor, John Winthrop, a man well calculated to win favor with the new King.‡ The General Court had a clear perception of its proper line of action, and followed up its advantages with promptitude, energy, and success. Its objects were to obtain from the King, in the first flush of the Restoration, a confirmation of the privileges which it had

*2 *New Haven Rec.*, 536; 1 Mather's *Magnalia*, 78.

†See Secretary Rawson's letter to Gov. Leete in 2 *New Haven Rec.*, 419.

‡1 *Hollister*, 207.

evolved out of a free town system, and to remove peaceably the obstacle to complete State-hood which was imposed by the independent position of New Haven. In March, 1660, the General Court solemnly declared its loyalty to Charles II., sent the Governor to England to offer a loyal address to the King and ask him for a charter, and laid aside £500 for his expenses. Winthrop was successful, and the charter was granted April 20, 1662.

The acquisition of the charter raised the Connecticut leaders to the seventh heaven of satisfaction. And well it might, for it was a grant of privileges with hardly a limitation. Practically the King had given Winthrop *carte blanche*, and allowed him to frame the charter to suit himself. It incorporated the freemen of Connecticut as a "body corporate and pollitique," by the name of "The Governor and Company of the English Collony of Conecticut in New England in America." There were to be a Governor, a Deputy Governor, and twelve Assistants (hitherto called Magistrates). The Governor, Assistants, and two Deputies from each town were to meet twice a year in General Assembly, to make laws, elect and remove Governors, Assistants and Magistrates. The people were to have all the liberties and immunities of free and natural subjects of the King, as if born within the realm. It granted to the Governor and Company all that part of New England south of the Massachusetts line and west of the "Norroganatt River, commonly called Norroganatt Bay" to the South Sea, with the "Islands thereunto adioyneinge." These were the essential points of the charter,* and it is difficult to see more than two points in which it altered the constitution adopted by the towns in 1639. There were now to be two deputies from each town; and the boundaries of the Commonwealth now embraced the rival colony of New Haven. The former change had already been recommended without

* See the charter in 2 *Conn. Rec.*, 3; and the process of obtaining it in 1 *Trumbull*, 239, and 1 *Hollister*, 202.

result by the General Court; and the latter was longed for by all the leaders of the colony, and was the objective point of the move for a charter. The fundamental point of the constitution, the supreme power of the General Court, was unchanged. Both Connecticut and New Haven had fixed their boundaries of their own will, or by agreement with their neighbors. But the separate existence of the smaller Commonwealth marred the fair proportions of the Commonwealth, in its natural outline, and Connecticut threw the King's sovereignty into her own scale in order to effect a peaceable removal of an obstacle to her complete State-hood. The town spirit built the State, and the King added his benediction to the structure.

New Haven did not submit without a struggle, for not only her pride of separate existence but the supremacy of her ecclesiastical system was at stake. For three years a succession of diplomatic notes passed between the General Court of Connecticut and "our honored friends of New Haven, Milford, Branford, and Guilford." Southold had promptly accepted the charter, and there was a strong party in Stamford and Guilford which desired to take the same course. To strengthen this party, Connecticut appointed or confirmed constables and magistrates in the towns named, and a war of annoyances was kept up on both sides. In October, 1664, the Connecticut General Court appointed the New Haven magistrates commissioners for their towns, "with magistraticall powers," established the New Haven local officers in their places for the time, and declared oblivion for any past resistance to the laws.* In December, Milford having already submitted, the remnant of the New Haven General Court, representing New Haven, Guilford, and Branford, held its last meeting and voted to submit,† "with a *salvo jure* of our former rights and claims, as a people who have not yet

*1 *Conn. Rec.*, 437.
†2 *N. H. Rec.*, 549; *Atwater*, 516.

been heard in point of plea." The next year the laws of New Haven were laid aside forever, and her towns sent deputies to the General Court at Hartford.

One of the propositions made by Connecticut in 1663* was that the New Haven towns should be formed into a distinct county, with its own court. New Haven's refusal to unite on any terms caused this and the other propositions to fall through, and the union was finally perfected without any conditions. But the new General Court, in May, 1666, constituted and bounded the four counties of Hartford, New London, New Haven and Fairfield, and gave them separate courts† and, in the next year, grand juries. The county system of Connecticut is thus only an outgrowth of the union. In 1701 the General Court further voted that its annual October session should thereafter be held at New Haven. This provision of a double capital was incorporated into the constitution of 1818, and continued until in 1873 Hartford was made sole capital by constitutional amendment.

The General Court, in its new form, at once took on all the features of a power superior to the towns, and resting no longer on the towns' authority. The settlement of the boundaries of new and old towns at once became a peculiar field of the General Court; and, until the number of towns increased so far as to form a safeguard, regulation of, and interference in, the civil and ecclesiastical affairs of the towns was far more common and minute than before. In 1685–6 all the towns whose title rested on Indian purchase received patents therefor from the General Court. This step was, for many of the towns, the first real "incorporation:" it may be compared, *mutatis mutandis*, to the conversion of an allod into a feud.

It must, of course, be granted that the state of affairs in Great Britain during the years 1634–60 had very much to do

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* 2 *New Haven Rec.*, 493.

† 2 *Conn. Rec.*, 34, 61.

with this opportunity of the town spirit to build up the form and fashion of a state in Connecticut. Chalmers * sneeringly says of the "little colony of New Haven" that it "enjoyed the gratifications of sovereign insignificance" until Charles II annexed it, without its consent, to Connecticut. On the contrary, the position of Connecticut was significant in the highest degree. With its neighbor commonwealth of Rhode Island, it held for over a century the extreme advanced ground to which all the other Commonwealths came up in 1775.† King and Parliament sustained the royal veto power over the enactments of other colonies; even Massachusetts lost the power to elect her own Governor; but Connecticut's position still kept alive the general sense of the inherent colonial rights which only waited for assertion upon the inevitable growth of colonial power. The charter of Connecticut was the key-note of the Revolution; and the terms of that charter are due, under God, to the free action of the town system transplanted into the perfect liberty of the wilderness.

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* 1 *Revolt of the Colonies*, 53.
† *Fowler*, 101.

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